THE HONORABLE ROBERT J. BRYAN

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HANA ETCHEVERRY, Individually and On Behalf of All Others Similarly Situated,

Plaintiff,

v.

FRANCISCAN HEALTH SYSTEM D/B/A CHI FRANCISCAN HEALTH, FRANCISCAN MEDICAL GROUP, FRANCISCAN HEALTH VENTURES, HARRISON MEDICAL CENTER, and HARRISON MEDICAL CENTER FOUNDATION.

Defendants.

Case No. 3:19-cv-05261-RJB-MAT

PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS AND COLLECTIVE SETTLEMENT

NOTED FOR HEARING: October 19, 2021

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I. INTRODUCTION

Plaintiff Hana Etcheverry ("Plaintiff") hereby moves for final approval of the Class and Collective Action Settlement Agreement (the "Settlement Agreement" or "Settlement," ECF 70-1). The Settlement resolves all of the claims in this action on a class and collective basis. As such, Plaintiff moves for an Order[1]:

(1) Granting final approval of the Settlement Agreement;

(2) Finally certifying the Class for settlement purposes;

(3) Finally appointing and approving Plaintiff Etcheverry as Class Representative;

(4) Finally appointing and approving Schneider Wallace Cottrell Konecky LLP and Terrell Marshall Law Group PLLC as Counsel for the Class and Opt-In Plaintiffs;

(5) Finally approving payment to Settlement Services, Inc. ("SSI") in the amount of $72,650 for its services as Settlement Administrator; and

(6) Finally approving the implementation schedule, below.

Plaintiff brings this class and collective action (the "Action") on behalf of herself and current and former non-exempt workers with direct patient care responsibilities, including Registered Nurses, Licensed Practical Nurses, Certified Nursing Assistants, and others similarly situated, who worked for a medical facility in Washington operated by Defendants Franciscan Health System d/b/a CHI Franciscan Health, Franciscan Medical Group, Franciscan Health Ventures, Harrison Medical Center, and Harrison Medical Center Foundation ("Defendants" or "CHI Franciscan"). The Class and Collective encompass such individuals who were subjected to a 30-minute automatically deducted meal period from April 9, 2015 through June 16, 2021 (for the Washington

[1] Plaintiff brings this Motion under Rule 23(e) and the long-established precedent requiring Court approval for Fair Labor Standards Act ("FLSA") settlements. The Motion is based on the following Memorandum of Points and Authorities, the Declaration of Carolyn Cottrell, the Declaration of Beth E. Terrell, and all other records, pleadings, and papers on file in the action and such other evidence or argument as may be presented to the Court at the hearing on this Motion. Plaintiff also submits a proposed Final Approval Order and Judgment with the moving papers.

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state law Class), and from April 9, 2016 through June 16, 2021 (for the FLSA Collective).[2] The Action is based on Defendants' alleged violations of Washington and federal labor laws.

The Court granted preliminary approval of the $5,500,000 non-reversionary Settlement on June 16, 2021. The Settlement resolves the claims of approximately 8,005 Class Members and approximately 1,275 Opt-In Plaintiffs.[3] Overall, the average net recovery is approximately $432.42 per Participating Class Member and each Opt-In Plaintiff will receive an additional $87.43, on average.[4] The Class Member with the largest award will receive an impressive $1,981.27, comprised of a Class share of $1,721.09 and an FLSA share of $260.18. With these considerable awards, the response of the Class Members has been resoundingly favorable—to date, no Class Members have objected to the Settlement, and just two individuals out of more than 8,000 have opted out.[5]

Given the excellent recoveries, the positive response of the Class, and that the Settlement will provide significant monetary payments in uncertain times, Class Counsel respectfully submits that the Court should approve the Settlement. By any measure, the Settlement provides a great benefit to the Class and Opt-In Plaintiffs and an efficient outcome in the face of expanding

[2] Excluding the time period covered by any previous settlement involving the Class including, but not limited to, a settlement with St. Joseph Medical Center which applied to registered nurses through November 30, 2016.

[3] The Notice approved by the Court and circulated to the Class and Collective invited those who worked during the FLSA Collective Period to submit an FLSA Collective Consent Form to become Opt-In Plaintiffs and receive a share of the FLSA Net Settlement – 1,275 individuals have done so as of the date of this Motion. Class Members, who do not request exclusion and are Opt-In Plaintiffs will receive a share from both the Class Net Settlement Fund and the FLSA Net Settlement Fund. The remainder of the FLSA Net Settlement Fund that is not distributed to the Opt-In Plaintiffs will be added to the Class Net Settlement Fund and re-distributed to the Class.

[4] The average recoveries for Class Members include the additional amount attributable to unclaimed amount of FLSA Settlement Funds (i.e., FLSA settlement funds allocated to Collective Members that did not opt in). Under the Settlement, the Collective Members that did not opt in do not release FLSA claims, and the funds attributable to them are to be distributed to the Participating Class Members. *See* Settlement Agreement, ¶¶ III.C, III.G.

[5] The Notice and Opt-In period end on September 27, 2021, and Plaintiff will submit an update to the Court prior to the hearing.

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litigation. It is fair, reasonable, and adequate in all respects. As set forth herein, the Settlement should be finally approved.

II. FACTUAL BACKGROUND

Plaintiff is a former non-exempt employee of Defendants, who worked as a nurse at Harrison Medical Center in Bremerton, Washington. *See* Pl.'s Compl. (ECF 1), ¶¶ 12, 34. Defendants operate a network of hospitals and clinics that provide healthcare services throughout the State of Washington. *Id.* at ¶ 29. Plaintiff, Opt-In Plaintiffs, and Class Members work for Defendants as hourly-paid, non-exempt employees with direct patient care responsibilities, including nurses, aides, technicians, and the like.[6] *See id*. at ¶¶ 52, 69.

Plaintiff alleges that the Class Members were not properly compensated for work performed for Defendants during unpaid meal periods due to Defendants' auto-deduct policy, before clocking in, and after clocking out. *See id*. at ¶¶ 29-51. In particular, Plaintiff alleges that these workers were required to remain on-duty during their unpaid meal breaks in accordance with Defendants' practices, policies, and as a requirement to abide by their patient care-related ethical obligations to their patients. *Id*. Plaintiff also alleges they were required to arrive early for their shifts, but were instructed to remain clocked out while they prepared for their day and were required to clock in only within a few minutes of their scheduled start time. *Id.* Plaintiff further alleges they were required to clock out within a few minutes of their end-of-shift, but were expected to stay late to complete charting and assist other hospital personnel. *Id.* With this litigation, Plaintiff seeks to recover all unpaid wages, compensation, penalties, and other damages owing the Class Members under the FLSA and Washington law.

Defendants have at all times denied, and continue to deny, these allegations, and deny any and all liability for Plaintiff's claims. Defendants further deny that Plaintiff's allegations are appropriate for class/collective treatment for any purpose other than for settlement purposes only. Specifically, Defendants argued that Plaintiff's class action complaint would fail for both

[6] Plaintiff, Opt-In Plaintiffs, and Class Members are sometimes referred to as "Class Members" for ease of discussion.

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substantive and procedural issues. Defendants contended that their auto-deduct policy, as well as their other timekeeping policies, were consistent with applicable law that to the extent there were any violations of the law, they occurred on an "ad hoc" basis and contrary to company policy. Because Defendants claimed the policies were consistent with the law and any violations of the law were done on an ad hoc basis, Defendants did not believe that the claims were susceptible to class certification.

III. PROCEDURAL HISTORY

Plaintiff filed this lawsuit against Defendants on April 9, 2019, asserting claims under the FLSA and the wage and hour laws of Washington on behalf of a putative FLSA collective and a putative Washington class. *See* ECF 1. Following a motion to dismiss that was denied, Defendants answered the complaint on August 15, 2019, and asserted various affirmative defenses. *See* ECF 40-44. The Parties proceeded to litigate formal discovery; each side propounded comprehensive requests and the Parties engaged in extensive meet and confer efforts. Cottrell Decl. at ¶ 13.

The Parties attended private mediation on August 27, 2020. *Id.* at ¶ 28. The Action was mediated by Cliff Freed, an experienced and skilled mediator with decades of experience as a neutral in employment litigation. *Id.* As a result of arm's length and good faith negotiations during that settlement conference, and through continued negotiations over the following months with Mr. Freed who continued to serve in his capacity as a mediator, the Parties reached a settlement in principle on or about January 29, 2021. *Id.* at ¶ 29; *see also* ECF 61. Over the course of the next few months, the Parties undertook the process of drafting, revising, and finalizing the settlement agreement terms, distilling and crystalizing those terms into a written settlement agreement, and agreeing on the form and content of a settlement notice/claims form process. *See* Cottrell Decl. at ¶ 30. The final version of the Settlement Agreement was agreed as to form on June 3, 2021. *Id.* at ¶ 31.

Plaintiff filed her preliminary approval motion on June 10, 2021. *See* ECF 67. Defendants filed a statement of non-opposition on June 14, 2021, stating that Defendants continue to deny liability but do not oppose the preliminary approval of the Settlement as fair, reasonable, and

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adequate. *See* ECF 69. Thereafter, the Court issued its order granting Plaintiff's preliminary approval motion on June 16, 2021. ECF 70.

IV. NOTICE OF SETTLEMENT, RESPONSE OF CLASS MEMBERS, AND OPT-IN PROCESS

Following the Court's preliminary approval order, the Settlement Administrator, SSI, received the Class and Collective Data from Defendants, which contained the names, last known mailing addresses, last known personal email addresses (to the extent available), social security numbers, and workweeks for the Class Members. Cottrell Decl. at ¶ 32. On July 28, 2021, SSI disseminated the Class and Collective Notice Packets via U.S. Mail and via email to all email addresses provided. *Id*. SSI sent the notice packet by U.S. Mail to some 8,004 recipients, and by email to 4,294 recipients.[7] *Id*. at ¶ 33. SSI established a case website, www.chifranciscanwagesettlement.com, which provides Settlement documents and information and allows for the submission of electronic FLSA Collective Consent Forms. *Id*. at ¶ 34. SSI also established a toll-free call center and provided an email address to field questions, address updates, and other inquiries from Class Members. *Id.*

In order to include such information on the notices, SSI first calculated the individual settlement payments for every Class Member using the workweek data provided by Defendants. *Id*. at ¶ 35. The notices informed the Class Members of: the Settlement terms; their expected share for both the Class allocation and the FLSA allocation; the deadline to submit objections, Requests for Exclusions, FLSA Collective Consent Forms, and disputes; the October 19, 2021 final approval hearing; the names and contact information for Class Counsel and Defendants' Counsel; and that Plaintiff would seek attorneys' fees, costs, and the service award and the corresponding amounts. *Id*.; *see also* ECF 71-1 at pp. 26-36. SSI included the URL for the case website and the toll-free call center number in the notice mailing. *Id*.

[7] Five additional individuals who did not appear on the class list (and therefore were not sent the notice) contacted SSI to self-identify as Class Members and request inclusion in the Settlement. SSI and Defendants have approved one request and are awaiting further information from the other four individuals.

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As of September 8, 2021, 644 hard copy notice packets have been returned to SSI as undeliverable without forwarding address. *Id*. at ¶ 36. SSI performed skip-tracing and other techniques to identify current or new mailing addresses, and approximately 575 notice packets were successfully re-mailed. *Id*. Approximately 69 U.S. Mail notice packets remain undelivered; 72 email notices were undeliverable. *Id*. The deadline for Class Members to opt out, object, and dispute their reported workweeks expires September 27, 2021. *Id.* at ¶ 37. The deadline for Collective Members to opt in also expires September 27, 2021. *Id.* To date, 1,275 Collective Members have opted into the FLSA portion of the Settlement. *Id*.

To date, not a single objection has been filed and just two Class Members out of more than 8,000 have requested exclusion from the Settlement.[8] *Id*. at ¶ 38. Moreover, just five Class Members have disputed the workweek figures reported in their Notices, and five additional individuals have self-identified as Class Members that should be covered under the Settlement. *Id*. Plaintiff will file a declaration from SSI regarding notice administration in advance of the final approval hearing (and following the September 27, 2021 deadline to opt in, request exclusion, and object).

In addition to distributing the Class and Collective Notice Packet, SSI is responsible for calculating individual settlement payments; calculating all applicable payroll taxes, withholdings and deductions; preparing and issuing all disbursements to be paid to Participating Class Members, the Class Representative, Class Counsel, and federal and local tax authorities; and handling inquiries and/or disputes from Class Members. *Id*. at ¶ 41. SSI is also responsible for the timely preparation and filing of tax reporting. *Id*. Following final approval of the Settlement, SSI will issue checks to the Class Members. *Id*. at ¶ 42.

V. TERMS OF THE SETTLEMENT

A. Basic Terms and Value of the Settlement

CHI Franciscan has agreed to pay a non-reversionary Gross Settlement Amount of $5,500,000 to settle the case. *Id.* at ¶ 43. The Class Net Settlement Fund, which is the amount available to pay settlement awards to the Class Members, is defined as the portion of the Gross

[8] The opt-outs are Faith Pearsall and Cheri Evanson. Cottrell Decl. at ¶ 39.

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Settlement Amount remaining after deduction of the FLSA Net Settlement Fund ($500,000), Settlement Administration Costs to the Settlement Administrator ($72,650), the Class Representative Service Payment (not to exceed $10,000, as determined by the Court), and the Class Counsel award (fees in the amount of one-third of the Gross Settlement Amount and costs in the amount of $11,000, as determined by the Court). *Id.* Opt-In Plaintiffs will receive payment from the $500,000 FLSA Net Settlement Fund for their FLSA claims. *See* Settlement Agreement at ¶¶ III.C.

The Gross Settlement Amount is a negotiated amount that resulted from substantial arms' length negotiations and significant investigation and analysis by Class Counsel. Class Counsel based their damages analysis and settlement negotiations on both formal and informal discovery, including payroll and timekeeping data, as well as interviews with dozens of Class Members across numerous healthcare facilities owned/operated by Defendants. Cottrell Decl. at ¶ 44. Class Counsel built a comprehensive damage model using the payroll and timekeeping data produced by Defendants, and applied formulas to determine the total potential damages for unpaid time based on a number of different scenarios developed from outreach/interview results (e.g., including probabilities of class/collective certification, probabilities of winning on the merits, and different outlooks based on variations in the class-wide assumptions for average number of minutes worked while off-the-clock). *Id.* at ¶ 45.

Using these formulas and scenarios, Class Counsel assesses the total potential exposure if Plaintiff prevailed on her claims—inclusive of derivative claims, penalty claims, and claims for liquidated damages—at approximately $17,545,000.[9] *Id.* at ¶ 46. The total amount of damages is broken down as follows.

[9] The damages analysis figures presented here are updated based on the final tally of Class Members, which increased to approximately 8,005 Class Members upon Defendants' compilation of the finalized Class and Collective Data for settlement administration purposes. Plaintiff previously reported that there were approximately 7,300 Class Members in her preliminary approval papers. The recovery of the overall damages estimate has not changed significantly with the additional Class Members—the percentage recovery of the core unpaid wage claims decreased from 38% to 35% and the percentage recovery of the total exposure decreased from 34.3% to 31.3%.

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Plaintiff calculated that unpaid wages owed, based on the assumption for each workday (and inclusive of overtime) of 1.083 hours of unpaid time—comprised of meal break work (0.5 hours), work during rest periods (0.25 hours), pre-shift off-the-clock work (0.1667 hours), and post-shift off-the-clock work (0.1667 hours) for each shift worked—would total approximately $15,726,000 in substantive damages (not including penalty and liquidated damages claims) for the approximately 8,000 putative class members. *Id.* at ¶ 47.

The negotiated non-reversionary Gross Settlement Amount of $5,500,000 represents approximately 35% of the $15,726,000 that Plaintiff calculated for the core unpaid wages claims. *Id.* at ¶ 48. In total, the $5,500,000 Gross Settlement Amount represents approximately 31.3% of Defendants' total exposure of $17,545,000. *Id.* Again, these figures are based on Plaintiff's assessment of a best-case-scenario. To have obtained such a result at trial, Plaintiff would have had to prove that all of the approximately 8,000 Class Members experienced the violations at the levels described above for every shift and every assignment, and that Defendants acted knowingly or in bad faith. *Id.*

Plaintiff and Class Counsel considered the significant risks of continued litigation, described hereinafter, when considering the proposed Settlement. *Id.* at ¶ 49. These risks were front and center, particularly given the nature of the off-the-clock work, which would be challenging to certify as a class action and/or to prove the claims on the merits. *Id.* In contrast, the Settlement will result in immediate and certain payment to the Class Members and Opt-In Plaintiffs of meaningful amounts, representing approximately 35% of their core claims for unpaid wages. The average net recovery will be approximately $432.42 per Class Member and $87.43 per Opt-In Plaintiff. *Id.* at ¶ 50. Because this is a non-reversionary settlement, any settlement amounts that are unclaimed by the Class Members will be re-distributed on a pro rata basis to increase the Class Members' individual recoveries, unless the total amount of unclaimed funds is less than $50,000 in which case those unclaimed funds will be distributed to the *cy pres* beneficiary. *See infra* at Sec. V.C. These amounts provide significant compensation and the Settlement provides an excellent recovery in the face of

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expansive and uncertain litigation. In light of all the risks, the settlement amount is fair, reasonable, and adequate. *Id.*

B. Class and Collective Definitions

Participating Class Members and Opt-In Plaintiffs will share in the Settlement. As the FLSA Collective consists entirely of individuals that worked in Washington, all Opt-In Plaintiffs are also Class Members. To the extent an individual is both a Participating Class Member and an Opt-In Plaintiff, he or she will receive a settlement allocation from both the Class component and the FLSA component of the Settlement.

The Class Members are comprised of approximately 8,000 current and former non-exempt workers with direct patient care responsibilities, including registered nurses, licensed practical nurses, certified nursing assistants, technicians, and other patient care workers, who worked for a facility owned/operated by CHI Franciscan in Washington at any time from April 9, 2015 through June 16, 2021, and were subjected to an automated 30-minute meal period deduction policy. *See* Settlement Agreement at ¶ I.B.

The "FLSA Collective" means all current and former non-exempt workers who worked in the above job classifications in Washington at any time from April 9, 2016 through June 16, 2021 and were subjected to an automated 30-minute meal period deduction policy. *See* Settlement Agreement at ¶ I.R. Members of the FLSA Collective could submit FLSA Collective Consent Forms to become Opt-In Plaintiffs. Settlement Agreement at ¶ III.F.3. To date, 1,275 individuals have submitted Consent Forms and will share in the FLSA component of the Settlement. Cottrell Decl. at ¶ 53.

C. Allocation and Awards

The Class Net Settlement Fund is approximately $3,461,540.37, assuming that the Court approves the fees, costs, and service award as requested. *See* Cottrell Decl. at ¶ 54. This fund will be used to pay the individual awards to Participating Class Members. The FLSA Net Settlement Fund is set not to exceed $500,000, of which any unused portion will be added to the Class Net

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Settlement Fund and thereby redistributed to the Participating Class Members.[10] *Id.* Each individual's share of the Class Net Settlement Fund and the FLSA Net Settlement Fund (if the individual is also an Opt-In Plaintiff) will be determined *pro rata* based on the total number of workweeks. *Id.* at ¶ 56.

Any checks remaining uncashed after 180 calendar days after being issued shall be void. Settlement Agreement at ¶ III.F.11. The Settlement Administrator will make all reasonable efforts to remail checks returned within 120 days after issuance, and will send a reminder notice to all individuals whose checks are not cashed at the 120 day mark. *Id.* If the amount of uncashed Settlement checks exceeds $50,000, then the funds from those checks will be redistributed *pro rata* to those Participating Class Members who timely cash their checks. *Id.* at ¶ III.F.12. If the amount of uncashed Settlement checks is less than $50,000, or if there are uncashed check funds after the redistribution, then the funds from those checks will be distributed *cy pres* equally between Pierce County Catholic Community Services and the Legal Foundation of Washington.[11] *Id*

D. Scope of Release and Final Judgment

The releases contemplated by the proposed Settlement are dependent upon whether the Class member is a Rule 23-only participant, or whether the Class Member has also filed a written consent to become an Opt-In Plaintiff. The Rule 23 Class members will release any and all claims under applicable Washington state law, based on or arising out of the same factual predicates of the Action, including all claims that were or could have been raised in the Action and any other wage and hour claims for damages, premiums, penalties, interest, attorneys' fees, and equitable relief, but will not release their potential FLSA claims. *Id.* at ¶ III.G.1-3. Opt-In Plaintiffs will release any and

[10] The Class Net Settlement Fund of approximately $3,461,540.37 includes approximately $388,523.70 in unclaimed funds from the FLSA Net Settlement Fund. Cottrell Decl. at ¶ 55.

[11] Pierce County Catholic Community Services ("CCS") is a nonprofit organization committed to serving individuals, children, families and communities struggling with poverty and the effects of intolerance and racism. CCS serves people in need, regardless of religious affiliation, race or economic status. The Legal Foundation of Washington ("LFW") is a nonprofit organization created in 1984 at the direction of the Washington Supreme Court to distribute IOLTA funds to legal aid organizations across the state. LFW serves the low-income population by investing in civil legal aid organizations across Washington.

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all claims under the FLSA based on or arising out of the same factual predicates of the Action, in addition to the state law wage and hour claims that could have been brought on the factual allegations in the Complaint. *See* Settlement Agreement at ¶ III.G.

The releases are effective upon the Effective Date of the Settlement. *Id.* at ¶ III.G. The release timing extends through the date of preliminary approval of the Settlement. *Id.* at ¶ I.J. Named Plaintiff Etcheverry also agrees to a general release. *Id.* at ¶ III.G.3.

VI. ARGUMENT

A. Ninth Circuit Precedent Favors and Encourages Class Settlements

A certified class action may not be settled without Court approval. *See* Fed. R. Civ. P. 23(e). Approval of a class action settlement requires three steps: (1) preliminary approval of the proposed settlement upon a written motion; (2) dissemination of notice of the settlement to all class members; and (3) a final settlement approval hearing at which objecting class members may be heard, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. Manual for Complex Litigation, *Judicial Role in Reviewing a Proposed Class Action Settlement*, § 21.61 (4th ed. 2004). The decision to approve or reject a proposed settlement is committed to the sound discretion of the court. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Rule 23 requires that all class action settlements satisfy two primary prerequisites before a court may grant certification for purposes of preliminary approval: (1) that the settlement class meets the requirements for class certification if it has not yet been certified; and (2) that the settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(a), (e)(2); *Hanlon*, 150 F.3d at 1020.

In the FLSA context, court approval is required for FLSA collective settlements, but the Ninth Circuit has not established the criteria that a district court must consider in determining whether an FLSA settlement warrants approval. *See, e.g., Dunn v. Teachers Ins. & Annuity Ass'n of Am.*, No. 13-CV-05456-HSG, 2016 WL 153266, at *3 (N.D. Cal. Jan. 13, 2016); *Otey v. CrowdFlower, Inc.*, No. 12-CV-05524-JST, 2015 WL 6091741, at *4 (N.D. Cal. Oct. 16, 2015). Most courts in this Circuit, however, evaluate the settlement under the standard established by the

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Eleventh Circuit in *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1355 (11th Cir. 1982), which requires the settlement to constitute "a fair and reasonable resolution of a bona fide dispute over FLSA provisions." *Otey*, 2015 WL 6091741, at *4; *Grewe v. Cobalt Mortg., Inc.*, No. C16-0577-JCC, 2016 WL 4014114, 2016 U.S. Dist. LEXIS 98224, at *1 (W.D. Wash. July 27, 2016)

Federal law strongly favors and encourages settlements, especially in class actions. *See Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989) ("[T]here is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits."). Moreover, when reviewing a motion for approval of a class settlement, the Court should give due regard to "what is otherwise a private consensual agreement negotiated between the parties," and must therefore limit the inquiry "to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

Applying this standard of review to other federal and state-law wage and hour class actions, federal courts in the Ninth Circuit routinely approve class and collective settlements similar to that reached in this case. *See, e.g., Amaraut v. Sprint/United Mgmt. Co.*, No. 19-cv-411-WQH-AHG, 2021 WL 3419232, 2021 U.S. Dist. LEXIS 147176, at *2 (S.D. Cal. Aug. 5, 2021) (granting final approval of a settlement that included both FLSA and Washington law claims); *Jones, et al. v. CertifiedSafety, Inc.*, Case No. 3:17-cv-02229-EMC, ECF 232 (N.D. Cal. June 1, 2020) (same); *Soto, et al. v. O.C. Communications, Inc., et al.*, Case No. 3:17-cv-00251-VC, ECF 299, 305 (N.D. Cal. Oct. 23, 2019) (same).[12] Likewise, in its June 16, 2021 order, the Court already granted preliminary approval. *See* ECF 70. This Court also conditionally certified the Class for settlement

[12] *See also O'Connor v. Uber Techs., Inc.*, No. 13-cv-03826-EMC, 2019 U.S. Dist. LEXIS 157070, at *12 (N.D. Cal. Sep. 13, 2019) (granting final approval of a settlement that included both FLSA and California Labor Code claims); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2017 U.S. Dist. LEXIS 23220, at *2 (N.D. Cal. Feb. 17, 2017) (same); *Guilbaud v. Sprint Nextel Corp.*, No. 3:13-CV-04357-VC, 2016 WL 7826649, at *1 (N.D. Cal. Apr. 15, 2016) (same); *Clifton v. Babb Constr. Co.*, No. 6:13-cv-1003 MC, 2014 WL 5018897, 2014 U.S. Dist. LEXIS 140951, at *1 (D. Or. Oct. 1, 2014) (granting final approval of a settlement that included both FLSA and Oregon law claims).

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purposes. *Id.* Accordingly, the only step that remains is final approval of the Settlement, which should be granted pursuant to Ninth Circuit case law and numerous decisions of federal district courts.

B. The Best Practicable Notice Was Provided to the Class Members

Pursuant to the Court's June 16, 2021 preliminary approval order, SSI sent the Court-approved Class and Collective Notice Packet to the Class Members in accordance with the terms of the Settlement. Cottrell Decl. at ¶¶ 33-34. The Notices were sent via U.S. Mail and email, and SSI established a case website where Class Members can view the Settlement and accompanying court filings and submit opt-in forms. *Id*. The notice process was robust, with over 8,000 notices sent via U.S. Mail and 4,294 notices sent via email. *Id*.

Notice of a class action settlement is adequate where the notice is given in a "form and manner that does not systematically leave an identifiable group without notice." *Mandujano v. Basic Vegetable Products, Inc.*, 541 F.2d 832, 835 (9th Cir. 1976). The notice should be the best "practicable under the circumstances including individual notice to all members who can be identified through reasonable effort." *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374 (9th Cir. 1993). Sending individual notices to settlement class members' last-known addresses constitutes the requisite effort. *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975); *Langford v. Devitt*, 127 F.R.D. 41, 45 (S.D.N.Y. 1989) ("[N]otice mailed by first class mail has been approved repeatedly as sufficient notice of a proposed settlement.").

The Settlement Administrator followed all of the procedures set forth in the Court-approved notice plan. Reasonable steps have been taken to ensure that all Class Members receive the Notice. Ultimately, of the 8,004 notices distributed via U.S. Mail, just 69 notices (0.86%) remained undeliverable[13] following skip-tracing and other techniques to verify current mailing addresses. Cottrell Decl. at ¶ 36. Moreover, the dissemination of notice via email increased the likelihood that Class Members successfully received the notice. *Id*. The notices provided reasonable estimates of Class Members' recovery, in addition to considerable information about the case and the

[13] Out of the 69 returned undeliverable notices with no trace address, 18 received a notice via email.

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Settlement. Accordingly, the notice process was effective and satisfies the "best practicable notice" standard.

C. The Settlement Readily Warrants Final Approval

In deciding whether to approve a proposed class action settlement, the Court must find that the proposed settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *Officers for Justice*, 688 F.2d at 625. Included in this analysis are considerations of: (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *Churchill Village, LLC. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

Importantly, courts apply a presumption of fairness if, as is the case here, "the settlement is recommended by class counsel after arm's-length bargaining." *Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 WL 1230826, at *6 (N.D. Cal. Apr. 1, 2011). There is also "a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). In light of these factors, the Court should find that the Settlement is fair, reasonable, and adequate, and finally approve it as to the Class and Opt-In Plaintiffs.

1. The Settlement is entitled to a presumption of fairness because it is the product of informed, non-collusive, and arm's-length negotiations

Courts routinely presume a settlement is fair where it is reached through arm's-length bargaining. *See Hanlon*, 150 F.3d at 1027; *Wren*, 2011 WL 1230826, at *14. This Settlement was a product of non-collusive, arm's-length negotiations. *See* Cottrell Decl. at ¶ 57. The Parties participated in mediation with Cliff Freed, who is a skilled and experienced mediator, that consisted of a lengthy session that lasted well into the night. *Id*. The Parties then spent several months continuing settlement negotiations, negotiating the material terms of the Settlement, and even more months negotiating the long form Settlement Agreement, with several rounds of revisions and

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proposals related to the terms and details of the Settlement. *Id*. at ¶ 58. Plaintiff is represented by experienced and respected litigators of representative wage and hour actions, and these attorneys feel strongly that the proposed Settlement achieves an excellent result for the Class Members. *Id*. at ¶ 59.

2. The Class Members overwhelmingly support the Settlement

The Ninth Circuit and other federal courts make clear that the number or percentage of class members who object to or opt out of the settlement is a factor of great significance. *See Mandujano*, 541 F.2d at 837; *see also In re Am. Bank Note Holographics, Inc.*, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy."). Courts have found that a relatively low percentage of objectors or opt outs is a very strong indicator of fairness that factors heavily in favor of approval. *See, e.g., Cody v. Hillard*, 88 F.Supp.2d 1049, 1059-60 (D.S.D. 2000) (approving the settlement in large part because only 3% of the apparent class had objected to the settlement).

To date, with the notice period close to completion, no Class Members have objected to the Settlement, and only two Class Members opted out. *See* Cottrell Decl. at ¶ 38. Indeed, only five workweek disputes have been submitted. *Id*. In addition, Plaintiff approves of the terms of the Settlement. *Id.* at ¶ 60; *see also* Declaration of Hana Etcheverry. Taken together, there is widespread support for the Settlement among Class Members. This factor weighs heavily in favor of final approval.

3. The strengths of Plaintiff's case

Plaintiff contends that she has strong wage and hour claims that are chiefly rooted in a centralized "auto-deduct" policy for deduction of meal period time. The existence of the common, underlying auto-deduct policy, among other common policies and practices, strengthens Plaintiff's case at both the certification and merits phases. Moreover, the Class Members all worked in the patient care setting, leading to constraints and pressures that drive the off-the-clock work in a manner that is universal across the Class. Outreach performed by Class Counsel confirms that the

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Class Members routinely experienced regular unpaid work during meal and rest periods, among other unpaid time. Cottrell Decl. at ¶ 61. Plaintiff continues to believe she has a very strong case but is also pragmatic in her awareness of the risks inherent in this litigation, particularly where there are thousands of Class Members that worked in different roles, under differing supervisors, at numerous different locations. *Id*. at ¶ 62.

4. The Action involves significant risk and the possibility of extensive further litigation

While Plaintiff is confident in the strength of her case, recovery of the damages and penalties previously referenced would require overcoming procedural and substantive challenges, such as class certification and ultimate success on the merits as to all of Plaintiff's claims across the entire Class. This is a questionable feat in light of developments in wage and hour and class and collective action law as well as the legal and factual grounds that Defendants have asserted to defend this action. *Id*. at ¶ 63. Off-the-clock claims are difficult to certify for class treatment, given that the nature, cause, and amount of the off-the-clock work may vary based on the individualized circumstances of the worker. *See, e.g.*, *Villafan v. Broadspectrum Downstream Servs.*, No. 18-cv-06741-LB, 2020 U.S. Dist. LEXIS 218152, at *15 (N.D. Cal. Nov. 20, 2020) (citing *In re AutoZone, Inc., Wage & Hour Employment Practices Litig.*, 289 F.R.D. 526, 539 (N.D. Cal. 2012), *aff'd*, No. 17-17533, 2019 WL 4898684 (9th Cir. Oct. 4, 2019)); *Kilbourne v. Coca-Cola Co*., No. 14CV984-MMA BGS, 2015 WL 5117080, at *14 (S.D. Cal. July 29, 2015); *York v. Starbucks Corp*., No. CV 08-07919 GAF PJWX, 2011 WL 8199987, at *30 (C.D. Cal. Nov. 23, 2011).

While Plaintiff is confident that she would establish that common policies and practices give rise to the off-the-clock work for the patient care staff at issue here, Plaintiff acknowledges that such off-the-clock work was performed at scores of different hospitals and clinics, and at various different departments within those hospitals and clinics, each with its own supervisors and management staff. *See* Cottrell Decl. at ¶ 65. With those considerations in mind, Plaintiff recognizes that obtaining class certification would present an obstacle, with the risk that the nursing staff might only be able pursue individual actions in the event that certification were denied. *Id*. at ¶ 66.

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Certification of off-the-clock work claims is complicated by the lack of documentary evidence and reliance on employee testimony, and Plaintiff would likely face motions for decertification as the case progressed. *Id*.

The monetary value of the proposed Settlement represents a fair compromise given the risks and uncertainties posed by continued litigation. *Id*. at ¶ 67. If the Action were to go to trial as a class and collective action (which Defendants would vigorously oppose if this Settlement Agreement were not approved), Class Counsel estimates that fees and costs would exceed $5,000,000. *Id*. at ¶ 68. Litigating the class and collective action claims would require substantial additional preparation and discovery. *Id*. It would require depositions of experts, the presentation of percipient and expert witnesses at trial, as well as the consideration, preparation, and presentation of voluminous documentary evidence and the preparation and analysis of expert reports. *Id*.

In contrast to litigating this suit, resolving this case by means of the Settlement will yield a prompt, certain, and very substantial recovery for the Class Members. *Id*. at ¶ 69. Such a result will benefit the Parties and the court system. *Id*. It will bring finality to extensive litigation and will foreclose the possibility of expanding litigation.

5. The amount of the settlement favors approval

In evaluating the fairness of a proposed settlement, courts compare the settlement amount with the estimated maximum damages recoverable in a successful litigation. *In re Mego Fin. Corp. Sec. Litig*., 213 F.3d 454, 459 (9th Cir.2000). Courts routinely approve settlements that provide a fraction of the maximum potential recovery. *See, e.g., See, e.g., Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (approving settlement amounting to 30 percent of the damages estimated by the class expert; court noted that even if the plaintiffs were entitled to treble damages that settlement would be approximately 10 percent of the estimated damages); *Officers for Justice*, 688 F.2d at 623; *Viceral v. Mistras Grp., Inc*., Case No. 15-cv-2198-EMC, 2016 WL 5907869, at

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*7 (N.D. Cal. Oct. 11, 2016) (approving wage and hour settlement which represented 8.1% of the total verdict value).[14]

A review of the Settlement reveals the fairness, reasonableness, and adequacy of its terms. *See* Cottrell Decl. at ¶ 70. The Gross Settlement Amount of $5,500,000 represents approximately 35% of the $15,726,000 that Plaintiff calculated in substantive damages for unpaid wages the Class Members, assuming a 100% violation rate across the Class. *Id*. When adding other substantive claims and potential penalties, the $5,500,000 settlement amount represents approximately 31.3% of Defendants' updated total estimated potential exposure (including penalties and liquidated damages) of $17,545,000. *Id*.

Again, these estimated figures are based on Plaintiff's assessment of a best-case-scenario. To have obtained such a result at trial(s), Plaintiff would have had to prove that each of the Class Members worked off-the-clock for 1.083 hours in each workday and that Defendants acted knowingly or in bad faith. *Id*. at ¶ 71. These figures would of course be disputed and hotly contested. *Id*. The result is well within the reasonable standard when considering the difficulty and risks presented by pursuing further litigation. *Id*.

6. Wide-ranging formal and informal discovery has been completed

The amount of discovery completed prior to reaching a settlement is important because it bears on whether the Parties and the Court have sufficient information before them to assess the merits of the claims. *See, e.g., Boyd v. Bechtel Corp*., 485 F. Supp. 610, 617, 625 (N.D. Cal. 1979); *Lewis v. Starbucks Corp*., No. 2:07-cv-00490-MCE-DAD, 2008 WL 4196690, at *6 (E.D. Cal. Sept. 11, 2008). Informal discovery may also assist parties with "form[ing] a clear view of the strengths and weaknesses of their cases." *Monterrubio v. Best Buy Stores*, L.P., 291 F.R.D. 443, 454 (E.D. Cal. 2013).

[14] *See also Stovall-Gusman v. W.W. Granger, Inc.*, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) ("10% gross and 7.3% net figures are 'within the range of reasonableness'"); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (gross settlement amount of 8% of maximum recovery and net settlement amount of 5%); *Ma v. Covidien Holding, Inc.*, 2014 WL 360196, at *4-5 (C.D. Cal. Jan. 31, 2014) (9.1% of "the total value of the action" is within the range of reasonableness).

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The Parties engaged in extensive formal, informal discovery, and class outreach that have enabled both sides to assess the claims and potential defenses in this action. *See* Cottrell Decl. at ¶ 73. Defendant produced thousands of pages of documents, as well as timekeeping and pay data for a 20% sample of the Class. *Id*. at ¶ 24. Defendant also produced class list information, which allowed Class Counsel to conduct dozens of outreach interviews. *Id*. at ¶ 25. Class Counsel used this information to perform an extensive analysis of the case, including a comprehensive damages analysis. *Id*. at ¶ 73. The Parties were able to accurately assess the legal and factual issues that would arise if the case proceeded to trial. *Id*.

7. Class Counsel are highly experienced

Where counsel is well-qualified to represent the class and collective in settlement negotiations, based on their extensive class action experience and familiarity with the strengths and weaknesses of the case, courts find this factor to support a finding of fairness. *Wren*, 2011 WL 1230826, at *10; *Carter v. Anderson Merchandisers, LP*, No. EDCV 08-0025-VAP OPX, 2010 WL 1946784, at *8 (C.D. Cal. May 11, 2010) ("Counsel's opinion is accorded considerable weight.").

In reaching this Settlement, Plaintiff's counsel relied on their substantial litigation experience in similar wage and hour class and collective actions. *Id*. at ¶¶ 5-7, 74; Declaration of Beth Terrell at ¶¶ 1-6. Class Counsel used their skill and expertise in performing liability and damages evaluations that were premised on a careful and extensive analysis of the effects of Defendants' compensation policies and practices on Class Members' pay. *Id.* at ¶ 74. Ultimately, facilitated by the mediator, the Parties used this information and discovery to fairly resolve the litigation for $5,500,000. *Id.* at ¶ 75. Class Counsel believe that Plaintiff has achieved a strong settlement in light of all the risks. *Id.*

D. The Class Representative Service Payment and Requested Attorneys' Fees and Costs are Reasonable

In approving the Settlement, the Court must determine whether "the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Justice*, 688 F.2d at 625. In

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addition to the terms and details of the Settlement discussed above, the Settlement also establishes a Class Representative Service Payment of up to $10,000 for Plaintiff. Likewise in evaluating the Settlement, the Court must evaluate Plaintiff's request for attorneys' fees and costs pursuant to the terms of the Settlement. In their fee motion, Class counsel request one-third of the Gross Settlement Amount, or $1,833,333, plus reimbursement of costs in the amount of $11,000.

Plaintiff sets forth the arguments in support of the service award, the attorneys' fees, and costs request in full in the accompanying Motion for Approval of Attorneys' Fees and Costs and Service Award, including that no objections to the service award, fees, or costs have been received from the Class and Collective members. Plaintiff does not repeat those arguments here. The Court should grant final approval to the requested service award, as well as the requested fees and costs, as reasonable.

E. The Court Should Finally Certify the Class

In its June 16, 2021 preliminary approval order, the Court granted certification of the provisional Washington Class. *See* ECF 70. Now that notice has been effectuated, the Court should finally certify the Class in its Final Approval Order and Judgment. The Class meets all of the requirements for final approval as set forth below.

1. The Class is numerous and ascertainable

The numerosity prerequisite demands that a class be large enough that joinder of all members would be impracticable. Fed. R. Civ. P. 23(a)(1). While there is no exact numerical cut-off, courts have routinely found numerosity satisfied with classes of at least 40 members. *See, e.g., Ikonen v. Hartz Mountain Corp.*, 122 F.R.D. 258, 262 (S.D. Cal. 1988); *Romero v. Producers Dairy Foods, Inc.*, 235 F.R.D. 474, 485 (E.D. Cal. 2006). Here, there are approximately 8,000 Class members, who have been identified and issued notice, easily satisfying numerosity and ascertainability. *See* Cottrell Decl. at ¶ 77.

2. Plaintiff's claims raise common issues of fact and law

The commonality requirement of Rule 23(a)(2) "is met if there is at least one common question of law or fact." *Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461, 467 (E.D. Pa. 2000). Rule

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23(a)(2) has been construed permissively. *Hanlon*, 150 F.3d at 1019. Plaintiff "need not show that every question in the case, or even a preponderance of questions, is capable of classwide resolution." *Wang v. Chinese Daily News, Inc*., 737 F.3d 538, 544 (9th Cir. 2013). "[E]ven a single common question" can satisfy the commonality requirement of Rule 23(a)(2). *Id*.

Plaintiff contends that common questions of law and fact predominate here, satisfying paragraphs (a)(2) and (b)(3) of Rule 23, as alleged in the operative complaint. *See* Cottrell Decl. at ¶ 78. Defendants have uniform policies applicable to the Class Members. *Id*. at ¶ 79. Specifically, Plaintiff alleges that the Class Members all perform the same primary job duties—providing direct patient care services. Plaintiff alleges the wage and hour violations are in large measure borne of Defendants' standardized policies, practices, and procedures that impact these direct patient care workers in the same ways, creating pervasive issues of fact and law that are amenable to resolution on a class-wide basis. In particular, Class Members are largely subject to the same: hiring and training process; timekeeping, payroll, and compensation policies; and meal and rest period policies and practices (and in particular, the auto-deduct policy). *Id*. Because these questions can be resolved at the same juncture, Plaintiff contends the commonality requirement is satisfied for the Class. *Id*.

3. Plaintiff's claims are typical of the claims of the Class

"Rule 23(a)(3) requires that the claims of the named parties be typical of the claims of the members of the class." *Fry*, 198 F.R.D. at 468. "Under the rule's permissive standards, a representative's claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. Here, Plaintiff contends that her claims are typical of those of all other Class Members. *See* Cottrell Decl. at ¶ 80. The Class Members were subject to the alleged illegal policies and practices that form the basis of the claims asserted by Plaintiff in this case. *Id*. Interviews with Class Members and review of timekeeping and payroll data confirm that these non-exempt patient care employees were subjected to the same alleged illegal policies and practices to which Plaintiff alleges she was subjected. *Id*. Thus, Plaintiff contends the typicality requirement is also satisfied. *Id*.

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4. Plaintiff and Class Counsel will adequately represent the Class

To meet the adequacy of representation requirement in Rule 23(a)(4), Plaintiff must show "(1) that the putative named plaintiff has the ability and the incentive to represent the claims of the class vigorously; (2) that he or she has obtained adequate counsel, and (3) that there is no conflict between the individual's claims and those asserted on behalf of the class." *Fry*, 198 F.R.D. at 469. Plaintiff's claims are in line with the claims of the Class, and Plaintiff's claims are not antagonistic to the claims of Class Members. *See* Cottrell Decl. at ¶ 81. Plaintiff has prosecuted this case with the interests of the Class Members in mind. *Id*. Moreover, Class Counsel has extensive experience in class action and employment litigation, including wage and hour class actions, and does not have any conflict with the Class. *Id*. at ¶¶ 5-7, 81.

5. The Rule 23(b)(3) requirements for class certification are also met

Under Rule 23(b)(3), Plaintiff must demonstrate that common questions "predominate over any questions affecting only individual members" and that a class action is "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). "The predominance analysis under Rule 23(b)(3) focuses on 'the relationship between the common and individual issues' in the case and 'tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *Wang*, 737 F.3d at 545.

Here, Plaintiff contends the common questions raised in this action predominate over any individualized questions concerning the Class. *See* Cottrell Decl. at ¶ 83. The Class is entirely cohesive because resolution of Plaintiff's claims hinge on the uniform policies and practices of Defendants, rather than the treatment the Class Members experienced on an individual level. *Id*. As a result, Plaintiff contends the resolution of these alleged class claims would be achieved through the use of common forms of proof, such as Defendants' uniform policies, and would not require inquiries specific to individual Class Members. *Id*.

Further, Plaintiff contends the class action mechanism is a superior method of adjudication compared to a multitude of individual suits. *Id.* at ¶ 84. To determine whether the class approach is superior, courts are to consider: (A) the class members' interests in individually controlling the

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prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3)(A)-(D).

Here, the Class Members do not have a strong interest in controlling their individual claims. *See* Cottrell Decl. at ¶ 85. The Action involves thousands of workers with very similar, but relatively small, claims for monetary injury. *Id*. If the Class Members proceeded on their claims as individuals, their many individual suits would require duplicative discovery and duplicative litigation, and each Class Member would have to personally participate in the litigation effort to an extent that would never be required in a class proceeding. *Id*. Thus, Plaintiff contends the class action mechanism would efficiently resolve numerous substantially identical claims at the same time while avoiding a waste of judicial resources and eliminating the possibility of conflicting decisions from repetitious litigation. *Id*. at ¶ 86.

The issues raised by the present case are much better handled collectively by way of a settlement. *Id*. at ¶ 87. Manageability is not a concern in the settlement context. *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 593 (1997). The Settlement presented by the Parties provides finality, ensures that workers receive substantial redress for their claims, and avoids clogging the legal system with numerous cases. *See* Cottrell Decl. at ¶ 88. Accordingly, class treatment is efficient and warranted, and the Court should certify the Class for settlement purposes.

VII. THE COURT SHOULD APPROVE THE PROPOSED SCHEDULE

Lastly, Plaintiff respectfully requests that the Court approve the following implementation schedule under the Settlement.

Effective Date	The date by which the Agreement is approved by the Court, and latest of: (i) if no objection to the Settlement is made, or if an objection to the Settlement is made and Judgment is entered but no appeal is filed, the last date on which a notice of appeal from the Judgment may be filed and none is filed; or (ii) if Judgment has been entered and a timely appeal from the Judgment is

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	filed, the date the Judgment is affirmed and is no longer subject to appeal.
Deadline for Defendants to pay the Gross Settlement Amount into the Qualified Settlement Account	Within 15 business days after Effective Date
Deadline for Defendants to deposit the amount of employer-side payroll taxes	Within 15 business days after Effective Date
Deadline for Settlement Services Inc.to make payments under the Settlement to Participating Class Members, Opt-In Plaintiffs, Plaintiff, Class Counsel, and itself	Within 15 days after Defendants fund the Gross Settlement Amount
Deadline for SSI to send a reminder notice to Participating Class Members that have not cashed their Settlement Share checks	120 days after issuance
Check-cashing deadline	180 days after issuance
Deadline for SSI to redistribute funds from uncashed Settlement Share checks to those Class Members and Opt-In Plaintiffs who cashed their Settlement Share checks or to the *cy pres* recipients, as applicable	As soon as practicable after check-cashing deadline
Deadline for SSI to provide written certification of completion of administration of the Settlement to counsel for all Parties and the Court	As soon as practicable after completion of the redistribution of uncashed Settlement Share check funds and/or the tender such funds to *cy pres*

VIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement Agreement and enter the accompanying proposed Final Approval Order and Judgment.

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Dated: September 14, 2021

Respectfully submitted,

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Attorney for Plaintiff and the Settlement Class and Collective

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2021, a true and accurate copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all counsel of record.

/s/ Carolyn H. Cottrell
Carolyn H. Cottrell

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